

## Federal Highway Administration, DOT

## § 635.105

State charged by its laws with the responsibility for highway construction. The term “State” should be considered equivalent to State DOT if the context so implies. In addition, State Highway Agency (SHA), State Transportation Agency (STA), State Transportation Department, or other similar terms should be considered equivalent to State DOT if the context so implies.

*Workday* means a calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State-recognized legal holidays.

[62 FR 6873, Feb. 14, 1997, as amended at 67 FR 75924, Dec. 10, 2002; 81 FR 86942, Dec. 2, 2016; 85 FR 72931, Nov. 16, 2020]

### § 635.103 Applicability.

The policies, requirements, and procedures prescribed in this subpart shall apply to all Federal-aid highway projects.

[69 FR 7118, Feb. 13, 2004]

### § 635.104 Method of construction.

(a) Actual construction work shall be performed by contract awarded by competitive bidding; unless, as provided in §635.104(b), the State DOT demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective or that an emergency exists. The State DOT shall assure opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply with the procedures and requirements set forth in §§ 635.112 and 635.114.

(b) Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the State in accordance with subpart B of part 635 of this chapter. Before such finding is made, the State DOT shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and cost effectively.

(c) In the case of a design-build project, the requirements of 23 CFR part 636 and the appropriate provisions pertaining to design-build contracting

in this part will apply. However, no justification of cost effectiveness is necessary in selecting projects for the design-build delivery method.

(d) In the case of a CM/GC project, the requirements of subpart E and the appropriate provisions pertaining to the CM/GC method of contracting in this part will apply. However, no justification of cost effectiveness is necessary in selecting projects for the CM/GC delivery method.

(e) In the case of an ID/IQ project, the requirements of subpart F of this part and the appropriate provisions pertaining to the ID/IQ method of contracting in this part will apply. However, no justification of cost effectiveness is necessary in selecting projects for the ID/IQ delivery method.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002; 81 FR 86942, Dec. 2, 2016; 85 FR 72931, Nov. 16, 2020]

### § 635.105 Supervising agency.

(a) The State DOT has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency. The State DOT shall be responsible for insuring that such projects receive adequate supervision and inspection to insure that projects are completed in conformance with approved plans and specifications.

(b) Although the State DOT may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the State DOT shall provide a full-time employed State engineer to be in responsible charge of the project.

(c) When a project is located on a street or highway over which the State DOT does not have legal jurisdiction, or when special conditions warrant, the State DOT, while not relieved of overall project responsibility, may arrange for the local public agency having jurisdiction over such street or highway to perform the work with its own forces or by contract; provided the following conditions are met and the Division Administrator approves the arrangements in advance.

(1) In the case of force account work, there is full compliance with subpart B of this part.

(2) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(3) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work; and

(4) In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be in responsible charge of the project.

**§ 635.106 Use of publicly owned equipment.**

(a) Publicly owned equipment should not normally compete with privately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local public agency for highway construction purposes may be warranted or justified. A proposal by any State DOT for the use of publicly owned equipment on such a project must be supported by a showing that it would clearly be cost effective to do so under the conditions peculiar to the individual project or locality.

(b) Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the following conditions are met:

(1) The proposed use of such equipment is clearly set forth in the Plans, Specifications and Estimate (PS&E) submitted to the Division Administrator for approval.

(2) The advertised specifications specify the items of publicly owned equipment available for use by the successful bidder, the rates to be charged, and the points of availability or delivery of the equipment; and

(3) The advertised specifications include a notification that the successful bidder has the option either of renting part or all of such equipment from the State or local public agency or otherwise providing the equipment nec-

essary for the performance of the contract work.

(c) In the rental of publicly owned equipment to contractors, the State or local public agency shall not profit at the expense of Federal funds.

(d) Unforeseeable conditions may make it necessary to provide publicly owned equipment to the contractor at rental rates agreed to between the contractor and the State or local public agency after the work has started. Any such arrangement shall not form the basis for any increase in the cost of the project on which Federal funds are to participate.

(e) When publicly owned equipment is used on projects constructed on a force account basis, costs may be determined by agreed unit prices or on an actual cost basis. When agreed unit prices are applied the equipment need not be itemized nor rental rates shown in the estimate. However, if such work is to be performed on an actual cost basis, the State DOT shall submit to the Division Administrator for approval the schedule of rates proposed to be charged, exclusive of profit, for the publicly owned equipment made available for use.

**§ 635.107 Participation by disadvantaged business enterprises.**

(a) The State DOT shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. In accordance with Title VI of the Civil Rights Act of 1964, subsequent Federal-aid Highway Acts, and 49 CFR part 26, the State DOT shall ensure equal opportunity for disadvantaged business enterprises (DBEs) participating in the Federal-aid highway program.

(b) In the case of a design-build, a CM/GC, or an ID/IQ project funded with title 23 funds, the requirements of 49 CFR part 26 and the State's approved DBE plan apply.

[67 FR 75925, Dec. 10, 2002, as amended at 81 FR 86942, Dec. 2, 2016; 85 FR 72931, Nov. 16, 2020]

**§ 635.108 Health and safety.**

Contracts for projects shall include provisions designed: